

February 14, 2017

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In re Connect America Fund, WC Docket 10-90

Dear Ms. Dortch:

On February 10, 2017, Barry Hart, CEO, Association of Missouri Electric Cooperatives; Dave Allen, Vice President of Regulatory Compliance & Community Development, Midwest Energy Cooperative; Michael Romano, Senior Vice President—Industry Affairs & Business Development, NTCA—The Rural Broadband Association; Brett Kilbourne, Vice President, Policy & General Counsel, Utilities Technology Council (“UTC”); Martha Duggan, Senior Director, Regulatory Affairs for the National Rural Electric Cooperative Association (“NRECA”); and the undersigned representing the Association of Missouri Electric Cooperatives, Midwest Energy Cooperative, HomeWorks Tri-County Electric Cooperative, Alger Delta Cooperative Electric Association and Great Lakes Energy (collectively the “Rural Coalition”) participated in separate meetings with the following Commission staff: Amy Bender, Legal Advisor, Wireline from the Office of Commissioner Michael O’Rielly; Nicholas Degani, Senior Counsel and Jay Schwarz, Acting Wireline Advisor from the Office of Chairman Ajit Pai; Alexander Minard, Deputy Division Chief; Ryan Palmer, Division Chief; and Katie King and Heidi Lankau of the Wireline Competition Bureau, Telecommunications Access Policy Division. At each of these meetings, attendees discussed the Connect America Fund (“CAF”) Phase II auction order circulated for consideration at the Commission’s February 2017 meeting.¹

In addition, on February 13, 2017, Barry Hart, CEO, Association of Missouri Electric Cooperatives (via phone); Michael Romano, Senior Vice President—Industry Affairs & Business Development, NTCA; Brett Kilbourne, Vice President, Policy & General Counsel, UTC (via phone); Douglas Jarrett, Keller and Heckman LLP, representing NRECA; and Karthik Reddy and undersigned counsel representing the Association of Missouri Electric Cooperatives,

¹ See FCC, Press Release, FCC Announces Tentative Agenda for February Open Meeting (Feb. 2, 2017), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0202/DOC-343312A1.pdf.

Midwest Energy Cooperative, HomeWorks Tri-County Electric Cooperative, Alger Delta Cooperative Electric Association and Great Lakes Energy met with Claude Aiken, Legal Advisor, Wireline from the Office of Commissioner Mignon Clyburn to discuss the CAF auction.

In the meetings, the Rural Coalition encouraged the Commission to adopt its weighting proposal for the CAF auction. That proposal encourages all providers—regardless of technology—to bid aggressively, thereby maximizing each limited available dollar of universal service funds. The Rural Coalition expressed concern that because certain weighting proposals appear to favor lower speeds, such proposals would likely discourage some providers that are seeking to deliver higher-tier speeds (*i.e.*, particularly, 1 Gigabit and 100 Mbps services) from participating in the auction.

As shown in the attached exhibit, winning rural broadband experiment bids for wireless providers at 25/3 Mbps² were generally in the range of 12-17% of reserve prices for unlicensed service and 25% of reserve prices for licensed LTE.³ Assuming that this trend continues in the CAF Phase II auction, the weighting proposal under consideration would significantly favor the 25/3 Mbps tier, making it difficult for bidders proposing to deliver higher speeds and unlimited capacity to compete. Such a result not only deprives rural communities of reasonably

² Because there have been no authorized winning satellite bids for which data are available, the attached exhibit includes estimates. Although the Commission did not have a 1 Gigabit tier, the attachment does incorporate the authorized winning wireline bids for the 100 Mbps tier, which generally ranged from 40-70% of the reserve price. See *infra* note 3 for a description of calculations.

³ Figures are calculated by taking the quotient of winning bid amounts and the total support for all census blocks won. For example, Skybeam, LLC (“Skybeam”) was awarded \$1,076,282 and \$1,066,849 to provide service to 357 and 201 locations in Illinois and Texas, respectively. See *Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, Consolidated Communications Networks, Inc., Delta Communications LLC, and Allamakee-Clayton Electric Cooperative, Inc.*, 30 FCC Rcd 8283, 8286 (2015). First Step Internet, LLC (“First Step”) was awarded \$415,855 to provide service to 453 locations in Idaho and Washington. See *Wireline Competition Bureau Announces Rural Broadband Experiments Support for 15 Provisionally Selected Bids Is Ready to Be Authorized and Releases Updated Frequently Asked Questions*, 30 FCC Rcd 5038, 5043 (2015). The total available support for the census blocks covered by these three winning bids amounted to at least \$7,687,272.50, \$6,296,370.70, and \$1,663,423, respectively, yielding bid-to-available-support ratios of 14.00%, 16.94%, and 25.00%. Because these total-available-support figures were calculated using \$0.00 for all census blocks above the extremely high-cost threshold, see *Wireline Competition Bureau Releases List of Census Blocks Eligible for Rural Broadband Experiments and Announces Enhancements to Map Depicting Initial Phase II Eligible Areas*, 29 FCC Rcd 9099, 9100 n.10 (2014), the bid-to-available-support ratios mentioned above may be high estimates. Assuming, for example, that the available support for all census blocks above the extremely high-cost threshold equals \$2,500, the first two ratios would drop slightly to 12.17% and 16.68%, respectively.

comparable service for the duration of the ten-year auction term,⁴ but also results in a less competitive auction.

Discouraging bidding does not further the Commission's goal of a technology-neutral auction. As Commissioner O'Rielly noted, "participants will now bid at the same time, ensuring the maximum possible competition in each round of the multi-round auction."⁵ Given the Commission's preference for a multi-round auction, a lack of competition may result in overpayment for slower speeds because competition will not drive down the bid prices.

To evaluate the impact of any weighting proposal, it is important to consider how the weighting is likely to impact the auction results (based upon a percentage of the reserve price). Ideally, any weighting will lead to "clustering" bids so that likely bids across technologies and speed tiers fall within a similar range and encourage providers to reduce their bids in each round of the auction. As noted above, however, the weighting under consideration does not "cluster" bids evenly but rather results in a preference for the 25/3 Mbps tier. The Rural Coalition also expressed concern about the impact of the weighting proposals placed in the record by other parties. Specifically, the Rural Coalition analyzed these proposals and found that they too fail to achieve an ideal "clustering" and instead favor lower speeds in a manner that is neither fair nor competitive.⁶

⁴ See Letter from Rebekah P. Goodheart, Counsel for the Association of Missouri Electric Cooperatives, Midwest Energy Cooperative, HomeWorks, Alger Delta & Great Lakes Energy et al. to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, at 4-6 (Jan. 19, 2017) (discussing rapid deployment of gigabit and other high-speed service and observing that at current growth rates based on FCC data, median download speeds will exceed 1,000 Mbps by 2025); see also Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, at 5 (Jan. 30, 2017) (observing that "[m]ajor research companies and industry leaders agree that over the next 10 years consumers will want use of new technologies such as ultra-high-definition streaming, virtual reality, and advanced cloud-based applications—all of which require enormous bandwidth").

⁵ *In re Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6111 (2016) (statement of Commissioner O'Rielly, approving in part and dissenting in part).

⁶ USTelecom, for example, has previously proposed weights of 0 for 1 Gigabit, 5 for 100 Mbps service, 15 for 25 Mbps service, and 25 for 10 Mbps service—put succinctly, a 0/5/15/25 weighting. See Letter from Jonathan Banks, Senior Vice President, Law & Policy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, at 4 (Feb. 9, 2017); see also Letter from Stephen E. Coran, Counsel to WISPA, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, 14-58, 14-259, at 3 (Jan. 31, 2017) (observing similarities between WISPA and USTelecom proposals). The Rural Coalition estimates that if such a weighting proposal were adopted, the weighting would significantly favor the 25/3 Mbps and 10/1 Mbps tiers, making it difficult—if not impossible—for bidders in higher speed tiers to participate and win. See Rural Coalition Exhibit. Such a mechanism would essentially ensure an unfair advantage for providers of 25/3 Mbps and 10/1 Mbps service, resulting in an auction that would be neither fair nor technology neutral.

To address this disparity and ensure a more equitable distribution, the Rural Coalition suggests a slight modification to the weighting under consideration to ensure that the “clustering” of bids is more equal, which should encourage more providers to bid and thereby foster a more competitive auction.

In addition, the Rural Coalition noted that evaluating the auction’s “success” as potential homes passed—as some have advocated⁷—is misguided. Homes passed is not the same as homes connected. Although in theory, satellite passes nearly all homes today, satellite adoption does not appear to be widespread. By contrast, in areas where members of the Rural Coalition have deployed high-speed broadband services, take rates in these rural areas are often 60-70% of homes passed. Spending billions of dollars to provide consumers a service that the market has repeatedly indicated does not meet consumers’ needs would not result in service that is reasonably comparable to that in urban areas.

Indeed, such a result is in tension with the very notion of universal service. Subsidizing a service to which only 30% of the potential households subscribe in a rural, unserved area falls far short of the goal of universal service and should not be viewed as a “success.”⁸ The Rural Coalition encouraged the Commission to evaluate, on a technology-by-technology basis, Form 477 data on actual take rates in order to gain a more accurate picture of consumer preferences.⁹

⁷ See, e.g., Letter from Jonathan Banks, Senior Vice President, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, at 1–4 (Feb. 9, 2017).

⁸ ViaSat, Inc. sought reconsideration of the Commission’s decision to reauction census blocks in which the subscription rate is less than 35 percent. See Petition for Reconsideration and Clarification of ViaSat, Inc., *In re Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58 & 14-259, at 3 (Aug. 8, 2016). In support of its position, ViaSat noted that it would be “extremely unlikely” that “winning satellite broadband bidders would . . . surpass a 32 percent subscription rate by 2020.” *Id.* at 3-4. NTCA opposed ViaSat’s request, noting that the Commission’s decision served as a “prudent check to confirm that consumers are actually finding” the winning service to be “a meaningful, reliable, and affordable way of securing Internet access” and noted that terrestrial broadband providers “have achieved remarkable success in stimulating broadband adoption in . . . hardest-to-serve areas.” Opposition of NTCA—The Rural Broadband Association, *In re Connect America Fund et al.*, WC Docket Nos. 10-90 & 14-58, CC Docket No. 01-92, at 5 (Sept. 2, 2016). The Rural Coalition supports NTCA’s position and encourages the Commission to reaffirm its initial decision. Spending billions of dollars of universal service to deliver a service that fewer than 30% of potential households want is not the best use of finite resources.

⁹ USTelecom submitted an estimate of costs for various technologies to argue that the auction should favor slower speeds to pass more locations. See Letter from Jonathan Banks, Senior Vice President, Law & Policy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, at 4 (Feb. 9, 2017). Even assuming that the costs in the USTelecom submission are accurate, which is difficult to determine without the underlying assumptions, the filing appears to assume that the costs by technology are static and thus fails to take into account the varying costs of areas based on density and geography. As a result, the filing creates a false sense of precision in terms of potentially funded locations. Moreover, the FCC intends to select bids as the most cost effective related to the reserve price, not necessarily the lowest price, which further underscores the false sense of precision from the filing. Further, the selected bids in the rural broadband experiments (“RBE”) show that costs for the same service vary based on the terrain, geographic, density and other factors. For example, Northern Valley Communications, LLC (“Northern

Doing so highlights the value of higher-speed technologies, a factor that is important to consider as part of the weighting framework.

Moreover, winning bids that are not capable of providing speeds and capacity necessary to deliver reasonably comparable service at the end of the ten-year auction will force the Commission to expend billions more dollars in the future in these very same areas to meet the statutory criteria. This is not an efficient use of finite universal service funds. By contrast, the higher speed and capacity tiers of 1 Gbps and 100 Mbps provide a better long-term value, as those assets are sufficient to deliver the speeds necessary for both today *and* tomorrow. Put differently, what appears to be cheaper in the short term is likely to be more expensive in the long term.

In addition to the weighting, the Rural Coalition discussed the need for the Commission to adopt accountability measures to prevent waste, fraud, and abuse. Although the Rural Coalition understands that the Commission may defer providing additional details related to accountability expectations until subsequent implementation stages, we encouraged the Commission to include the language below to put parties on notice now of the fundamental expectations of the Commission:

To promote the integrity and efficiency of the competitive bidding process, it is essential to prevent gaming and ensure that providers bidding in tiers have designed their network to meet the speed and capacity thresholds for *all* consumers in the supported areas over the useful life of the supported network. The Commission therefore commits to seeking comment in the upcoming procedures on different means of accomplishing this goal. For example, the Rural Coalition and American Cable Association have submitted proposals to protect the integrity of the fund.¹⁰ The Rural Coalition proposal would create an initial

Valley”) was awarded support of more than \$4,900 per location for fixed wireless LTE at 25/3 Mbps in the rural broadband experiments, far greater than the \$1,200 per location estimated by USTelecom. *See* FCC, RBE Overview: Summary Authorizations (Dec. 12, 2016), *available at* <https://www.fcc.gov/general/rural-broadband-experiments> (showing that Northern Valley was awarded \$2,002,120 to serve 258 Census Blocks with 411 total locations for an average of \$4,920 per location). Similarly, in category 1 for 25/3 Mbps using fiber, winning bids varied from \$299 to \$4,232 per location, which are not only lower than USTelecom’s estimate of \$5,000 for fiber but also show that costs are highly variable. *See id.* (showing that BARC Electric Cooperative was awarded \$239,918 for 64 Census Blocks to cover a total of 801 locations for an average of \$299 per location, and that Federated Telephone Cooperative was awarded \$1,455,962 to serve 95 Census Blocks with 344 locations for an average of \$4,232 per location).

¹⁰ *See* Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, at 10-11 (Jan. 30, 2017); Letter from Rebekah P. Goodheart, Counsel for the Association of Missouri Electric Cooperatives, Midwest Energy Cooperative, HomeWorks, Alger Delta & Great Lakes Energy et al. to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, at 7-9 (Jan. 19, 2017).

screen to ensure bidders can deliver the requisite speed and capacity of a given tier. Given the importance of a fair auction, we believe it is necessary and appropriate to ensure that the Commission's procedures are sufficient to prevent providers from bidding in tiers for service that they are not capable of delivering.

Finally, as discussed in our January 19 proposal, the Rural Coalition urged the Commission to adopt strict *ex post* remedies to further discourage potential abuse. Thus, in addition to forfeitures, the Commission should bar bidders that abuse the process by making materially false claims (e.g., material overstatements of coverage or capacity) regarding their technical capability to deliver in a given tier from participating in future CAF auctions. Doing so would be consistent with the Commission's approach to bidders that violate the anti-collusion rule.¹¹

Please contact me if you have any questions regarding these matters.

Sincerely,

/s/ Rebekah P. Goodheart

Rebekah P. Goodheart

Attachment

cc: Amy Bender
Nicholas Degani
Jay Schwarz
Heidi Lankau
Katie King
Alexander Minard
Ryan Palmer
Claude Aiken

¹¹ See 47 C.F.R. § 1.2109(d) ("Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.").

CAF AUCTION WEIGHTING

		0/20/40/60/25 – Circulated		0/30/60/70/25 – Revised Rural Coalition		0/5/15/25 – USTelecom [‡]	
Speed	Bid/Reserve Price	Weighting	Weighted Bid	Weighting	Weighted Bid	Weighting	Weighted Bid
1 Gigabit	95%	0	95	0	95	0	95
1 Gigabit	80%	0	80	0	80	0	80
1 Gigabit	75%	0	75	0	75	0	75
1 Gigabit	70%	0	70	0	70	0	70
100 Mbps	60%	20	80	30	90	5	65
100 Mbps	50%	20	70	30	80	5	55
100 Mbps	45%	20	65	30	75	5	50
100 Mbps	40%	20	60	30	70	5	45
25 Mbps	30%	40	70	60	90	15	45
25 Mbps	25%	40	65	60	85	15	40
25 Mbps	12%	40	52	60	72	15	27
25 Mbps	10%	40	50	60	70	15	25
10 Mbps	25%	60	85	70	95	25	50
10 Mbps	15%	60	75	70	85	25	40
10 Mbps	12%	60	72	70	82	25	37
10 Mbps	10%	60	70	70	80	25	35
10 Mbps + Latency	10%	85	95	95	105	*	*
10 Mbps + Latency	5%	85	90	95	100	*	*
10 Mbps + Latency	2%	85	87	95	97	*	*
10 Mbps + Latency	1%	85	86	95	96	*	*

[‡] Weighting for speed tiers is taken from Letter from Jonathan Banks, Senior Vice President, Law & Policy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, at 4 (Feb. 9, 2017). USTelecom's most recent filed proposal does not include any proposed weighting for high latency. Although USTelecom filed a proposal in August 2016 that included a high-latency weight of -75 points, see Reply Comments of the United States Telecom Association, *In re Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, 14-259, at 3 (Aug. 5, 2016), that proposal employed a system of negative weights that may not translate appropriately to a system of positive weights comparable to the Commission's circulated proposal.